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SERIAL NUMBER	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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08/126,391 09/23/93 MILLER

F1M1/0916

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NR102CIP  
EXAMINER

PIKE, A

ART UNIT PAPER NUMBER

6

3102  
DATE MAILED:

09/16/94

This is a communication from the examiner in charge of your application.  
COMMISSIONER OF PATENTS AND TRADEMARKS

☐ This application has been examined ☐ Responsive to communication filed on ☐ This action is made final.

A shortened statutory period for response to this action is set to expire -0- month(s), 30 days from the date of this letter.  
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

- ☐ Notice of References Cited by Examiner, PTO-892.
- ☐ Notice of Draftsman's Patent Drawing Review, PTO-948.
- ☐ Notice of Art Cited by Applicant, PTO-1449.
- ☐ Notice of Informal Patent Application, PTO-152.
- ☐ Information on How to Effect Drawing Changes, PTO-1474.
- ☐

Part II SUMMARY OF ACTION

- ☒ Claims 1-41 are pending in the application.  
Of the above, claims are withdrawn from consideration.
- ☐ Claims have been cancelled.
- ☐ Claims are allowed.
- ☐ Claims are rejected.
- ☐ Claims are objected to.
- ☒ Claims 1-41 are subject to restriction or election requirement.
- ☐ This application has been filed with informal drawings under 37 C.F.R. 1.85 which are acceptable for examination purposes.
- ☐ Formal drawings are required in response to this Office action.
- ☐ The corrected or substitute drawings have been received on Under 37 C.F.R. 1.84 these drawings are ☐ acceptable; ☐ not acceptable (see explanation or Notice of Draftsman's Patent Drawing Review, PTO-948).
- ☐ The proposed additional or substitute sheet(s) of drawings, filed on has (have) been ☐ approved by the examiner; ☐ disapproved by the examiner (see explanation).
- ☐ The proposed drawing correction, filed has been ☐ approved; ☐ disapproved (see explanation).
- ☐ Acknowledgement is made of the claim for priority under 35 U.S.C. 119. The certified copy has ☐ been received ☐ not been received ☐ been filed in parent application, serial no. ; filed on .
- ☐ Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.
- ☐ Other

EXAMINER'S ACTION

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**Part III DETAILED ACTION**

*Election/Restriction*

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:

Invention I. Claims 1-27 and 36-41, drawn to an apparatus for unloading powder, classified in Class 406, subclass 141.

Invention II. Claims 28-35, drawn to a method of unloading powder, classified in Class 406, subclass 151.

2. The inventions are distinct, each from the other because of the following reasons:

3. Inventions II and I are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (M.P.E.P. § 806.05(e)). In this case the apparatus as claimed can be used to practice another and materially different process such as drawing the powder through the pick-up tube pneumatically.

4. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by

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their different classification, restriction for examination purposes as indicated is proper.

5. For each invention, this application contains claims directed to the following patentably distinct species of the claimed invention:

**For Invention I:**

Species 1, shown in Fig. 1, upon which claims 1-19 and 36-38 are readable; and

Species 2, shown in Fig. 5, upon which claims 1-6, 8-15, 17-27, and 39-41 are readable; and

**For Invention II:**

Species 1, shown in Fig. 1, upon which claims 28-31 are readable; and

Species 2, shown in Fig. 5, upon which claims 28-30 and 32-35 are readable.

Applicant is required under 35 U.S.C. § 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, for Invention I, claims 1-6, 8-15, and 17-19 are generic; and for Invention II, claims 28-30 are generic.

Applicant is advised that a response to this requirement must include an identification of the species that is elected

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consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 C.F.R. § 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. M.P.E.P. § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. § 103 of the other invention.

6. Applicant is advised that the response to this requirement to be complete must include an election of the invention, and an election of the species of the election invention, to be examined even though the requirement be traversed.

7. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 C.F.R. § 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a diligently-filed petition under 37 C.F.R. § 1.48(b) and by the fee required under 37 C.F.R. § 1.17(h).

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*Conclusion*

8. Any inquiry concerning this communication should be directed to Examiner Andrew Pike at telephone number (703) 308-3423.

Papers related to this application may be submitted to Group 3100 by facsimile transmission. Papers should be faxed to Group 3100 via the PTO Fax Center located within the Group. The faxing of such papers must conform with the notice published in the Official Gazette, 1096 OG 30 (November 15, 1989). APPLICANT SHOULD **NOT** SUBMIT THE ORIGINAL PAPERS IN ADDITION TO THE FAXED COPY RECEIVED, SINCE THE FAXED COPY THEREOF RECEIVED WILL BE THE PERMANENT COPY AS REQUIRED BY 37 C.F.R. § 1.52(a) AND THE ORIGINAL SIGNATURE REQUIRED BY 37 C.F.R. § 1.33(a) IS WAIVED TO THE EXTENT THAT A FACSIMILE SIGNATURE IS ACCEPTABLE, 1096 OG 30. Applicant should retain the original papers as evidence of the content of the facsimile transmission. The Fax Center number is (703) 305-7687.

*Andrew C. Pike*  
9-15-1994

**ANDREW C. PIKE  
PATENT EXAMINER  
ART UNIT 312**

acp  
September 15, 1994